



The Planning Inspectorate

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# Report to Hertsmere Borough Council

**by John R Mattocks BSc DipTP MRTPI FRGS**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date: 14 September 2016**

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PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

**REPORT ON THE EXAMINATION INTO THE HERTSMERE LOCAL PLAN**

**(Site Allocations and Development Management Policies)**

Document submitted for examination on 16<sup>th</sup> November 2015

Examination hearings held between 12<sup>th</sup> and 14<sup>th</sup> April 2016

File Ref: PINS/N1920/429/13

## Abbreviations Used in this Report

AM	Additional Modification
CS	Core Strategy
DMPO	Town and Country Planning (Development Management Procedure)(England)Order
HBC	Hertsmere Borough Council ('the Council')
HELAA	Housing and Economic Land Availability Assessment
HLP	Hertsmere Local Plan (adopted 2003)
GPDO	The General Permitted Development Order
GTAA	Gypsy and Traveller Accommodation Assessment
LDS	Local Development Scheme
LP	Local Plan
LPA	Local Planning Authority
MM	Main Modification
NPPF	National Planning Policy Framework ('the Framework')
OAHN	Objectively Assessed Housing Need
PPG	Planning Policy Guidance (eg PPG2 – Green Belts)
PPTS	Planning Policy for Traveller Sites
SA	Sustainability Appraisal
SADMP	Site Allocations and Development Management Policies Plan
SCI	Statement of Community Involvement
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment

## **Non-Technical Summary**

This report concludes that the Hertsmere Site Allocations and Development Management Policies Plan provides an appropriate basis for the planning of the Borough, provided that a number of modifications are made to the plan. The Hertsmere Borough Council has specifically requested me to recommend any modifications necessary to enable the plan to be adopted.

All of the modifications to address this were proposed by the Council but where necessary I have amended detailed wording and/or added consequential modifications where necessary and I have recommended their inclusion after considering the representations from other parties on these issues.

The Main Modifications can be summarised as follows:

- Statistical tables on housing supply and the table in policy SADM1 are updated and amended to take account of the deletion of allocated site H9 (Sunny Bank School) which remains in the Green Belt. Proposal C1 in policy SADM33 is also deleted;
- Policies SADM2 and SADM10 are modified to delete reference to land safeguarded for future development continuing to be treated as if it were in the Green Belt, substituting a reference to their use in the meantime not prejudicing their long-term development;
- Policy SADM4 seeking contributions towards the provision of affordable housing from the development of sites of between 5 and 10 dwellings is deleted along with the accompanying supporting text;
- Policy SADM9 is modified to make clear that control over changes of use from offices to residential use applies only when planning permission is required;
- Green Space policies SADM35 and 36 are re-written and the number of sites identified as Local Green Space is significantly reduced. Most of these sites, including 'The Paddock' at Bushey Heath, are redesignated as 'Open Spaces' to which policy SADM35 applies; Appendix G is amended accordingly;
- Policies for retail and other uses within primary and secondary shopping frontages are re-written especially in respect of the proximity of A5 (hot food takeaway) uses to secondary schools;
- An expanded Monitoring Framework is to be included in the plan;
- The policies map is to be produced separately from the plan.

## Introduction

1. This report contains my assessment of the Hertsmere Site Allocations and Development Management Policies Plan in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). I consider first whether the Borough Council have complied with the duty to co-operate during the preparation of the plan. I then consider whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (paragraph 182) makes clear that to be sound, a Local Plan should be positively prepared; justified; effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The basis for my examination is the submitted draft plan (November 2015) which is the same as the document published for consultation in July 2015.

## Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearing(s), are necessary. The MMs are referenced in bold in the report in the form MM1, MM2, MM3 etc, and are set out in full in the Appendix.
4. Following the examination hearings, the Council prepared a schedule of proposed MMs and carried out sustainability appraisal of them. The MM schedule was subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report and in this light I have made amendments to the detailed wording of several of the main modifications. None of the amendments significantly alters the content of the modifications as published for consultation or undermines the participatory processes and sustainability appraisal that has been undertaken. Where necessary I have highlighted these amendments in the report.

## Policies Map

5. The Regulations<sup>1</sup> require the Council to maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan<sup>2</sup> for the area. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. In this case, the submission policies map comprises a Borough-wide map which is included in a pocket attached to the back cover of the plan and a set of larger scale plans identified as

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<sup>1</sup> The Town and Country Planning (Local Planning)(England) Regulations 2012, Regulation 9

<sup>2</sup> This includes the Minerals and Waste Plan prepared by the County Council

Maps A-G which are bound in to the plan following the appendices and listed on page 241 of the plan, Document SD01.

6. In statute, the policies map is a separate document; it is not part of the Local Plan. This is dealt with at the end of this report. The Council have clarified that the large scale site allocation plans set out in Appendix A to the plan will be extracted and included on the adopted policies map.
7. The policies map is not a development plan document and so I do not have the power to recommend main modifications to it. However, MM4 necessitates corresponding changes to be made to the policies map. All proposed changes to the policies map were published for consultation alongside the MMs.
8. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted policies map to include all the changes shown on the submission policies map as amended consequentially by both the main and additional modifications to the plan.

## **Assessment of Duty to Co-operate**

9. Section s20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on them by section 33A of the 2004 Act in relation to the Plan's preparation. This relates to the development or use of land including the provision of strategic infrastructure which would have a significant impact on at least two planning areas, and involves adjoining local planning authorities. Three are Greater London Boroughs,<sup>3</sup> four are Hertfordshire Districts<sup>4</sup> and Hertfordshire County Council is the planning authority responsible for Minerals and Waste Planning. Furthermore, the duty extends to the 'prescribed' bodies set out in Regulation 4 of the Local Plan Regulations, which include Hertfordshire County Council as the Local Highway Authority.
10. The Council have prepared a statement of compliance with the Duty to Co-operate<sup>5</sup> which sets out in some detail the nature of the working relationships which have been developed over some period of time. Initially, close working arrangements were set-up in connection with the preparation of the Core Strategy which was adopted in January 2013, which arrangements were found by the Inspector who examined that plan to satisfy the Duty to Co-operate. The statement illustrates<sup>6</sup>, amply, that co-operation has continued with the relevant authorities from 2013 through to the submission of the published plan in late 2015. Not only have regular meetings taken place to consider wider strategic issues, including housing and employment but the outcome of those meetings is signalled. It is noted, in particular, that a joint SHMA and Economy study for SW

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<sup>3</sup> Barnet, Enfield and Harrow

<sup>4</sup> St. Albans, Three Rivers, Watford and Welwyn-Hatfield

<sup>5</sup> Doc. ref. SD05

<sup>6</sup> In particular, Table 2

Hertfordshire also involves Dacorum Borough Council. Evidence has also been provided on engagement and co-operation with local nature and infrastructure partnerships on strategic issues.

11. Despite the on-going engagement with Duty-to-Cooperate bodies, representations were made on the submission plan by the Environment Agency and Welwyn-Hatfield Council. The concerns raised by the Environment Agency are, however, matters mainly of detail whereas those by the Welwyn-Hatfield Council relating to the evidence base on gypsy and traveller provision has been satisfied by the submission of an updated Gypsy and Traveller Assessment. The Duty to Cooperate is not a 'duty to agree' and I do not identify any shortcomings in the processes followed with an inter-council officer meeting held shortly before submission helping to clarify the issues involved. The Council have furnished copies of letters from adjoining authorities and prescribed bodies confirming their satisfaction with the co-operative arrangements made.
12. Interestingly, the Council's statement includes a table showing the key issues to be considered in future co-operation. This is looking primarily towards the review of the Core Strategy which is under way. It is correct that strategic and cross-boundary issues, such as how to accommodate the Objectively Assessed Housing Need, will be major issues for that review. I am pleased to see that the working arrangements for that process are already in place, but they do not appertain to the Duty to Co-operate for this plan.
13. Taking account of all of the evidence presented I am satisfied that the local planning authority has complied with the duty imposed on them by section 33A of the 2004 Act in relation to the preparation of this local plan.

## **Assessment of Soundness**

### **Main Issues**

14. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified 12 main issues upon which the soundness of the plan depends.

**Issue 1 – Whether the plan is likely to be effective in ensuring the delivery of housing to meet the requirements of the Hertsmere Core Strategy as adopted in January 2013** (policy SADM1, plan text paras. 2.4-2.9 including Table 1).

#### *Statistical aspects of supply*

15. It is made clear in the introductory paragraphs to the SADMP that the plan sets out the detailed proposals and policies required to deliver the aims and objectives of the adopted Core Strategy. For that reason, no separate aims and objectives are set for the SADMP. Core Strategy objective 3 is 'to maintain an adequate supply of suitable land, focused on brownfield sites within the principal towns, to accommodate expected development needs and supporting community infrastructure.' The Core Strategy post-dates the

issue of the Framework although the housing target was partly informed by the now revoked East of England Plan<sup>7</sup>. The Inspector who carried out the examination of the Core Strategy recommended that an early review be carried out to re-assess housing need for later in the plan period. That review is now under way and the Council have acknowledged that a new Overall Assessment of Housing Need (OAHN) may well result in an increased housing requirement. It is not for me to seek to re-examine the Core Strategy requirement<sup>8</sup>.

16. For the plan to be 'positively prepared'<sup>9</sup> it should be shown that the land allocations made it in will be effective in delivering the required housing, and other development, over the plan period consistent with the principles of sustainable development.
17. The housing requirement is set in Core Strategy policy CS1. It is that there should be at least 3990 additional dwellings in Hertsmere Borough from the base date of 1 April 2012 to an end date of 31 March 2027, a 15 year period. Table 1 in the submitted plan shows the position at 1 April 2015 at which point there had been 912 dwelling completions since 2012. The Council have accepted that the figures should be as up-to-date as possible for the plan to be sound and they have provided an update to the figures in Table 1 with some corrections, most significantly an update to the figure for the Elstree Way Corridor to reflect the adoption of the Area Action Plan for that area<sup>10</sup>.
18. Table 1 includes various categories of site as explained in a series of footnotes. Although some of the allocated sites have subsequently been granted planning permission there is no double counting. However, an adjustment in the allocated site category is required to align with MM4<sup>11</sup>. A 6% discount is applied to the dwelling estimates not only to sites with permission but also to allocations based upon past trends to allow for possible non-implementation. That is more than the 5% buffer needed to accord with the NPPF approach and increases confidence that, taking all sources of supply into account, the 3990 dwellings needed to meet the Core Strategy requirement will be delivered over the plan period. The plan has been positively prepared in that regard.
19. No issue has been raised during this examination as to the ability of the LPA to deliver a 5 year supply of land for housing as measured against the Core Strategy housing requirements. Completions between 2012 and 2015 have averaged 304 a year (912 in total), which is above the CS target of 266 and represents 23% of the total CS requirement. Furthermore, the Council indicate that 68% of the total CS requirement to 2027 is committed or identified (allocated) in the submitted SADMP, representing 91% of the total requirement during the plan period<sup>12</sup>.

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<sup>7</sup> See Core Strategy Inspector's Report (Doc. Ref. DOC 27) for further details

<sup>8</sup> Gladman Development Ltd v Wokingham BC [2014] EWHC 2320 (Admin), Lewis J

<sup>9</sup> NPPF, paragraph 182.

<sup>10</sup> Document BD12

<sup>11</sup> Deletion of site H9, see paragraphs 26-30

<sup>12</sup> Taken from paragraph 1.7 of Doc. HBC/1.

20. A housing trajectory was not submitted with the SADMP but that supplied latterly<sup>13</sup> projects a high rate of completions until 2021, well above the CS annual requirement. Thereafter is a marked falling away to below the annual average. The trajectory is based upon information derived from the SHLAA, from landowners and developers, which inevitably involves assumptions about the health of the housing market. There are inevitably many uncertainties in that regard. In so far as Core Strategy policy CS3, read together with the contingency planning section of chapter 9, represents a Housing Implementation Strategy it focuses on correction mechanisms to remedy an under-delivery against plan requirements. However, should housing development progress at a significantly more rapid rate during the early years of the plan period there would be implications for the maintenance of a continuing five-year supply in accordance with paragraph 47 of the NPPF especially during the period 2021-27.
21. In itself, this does not render this plan unsound. Paragraph 47 does not require sites for the whole 15 year plan period to be identified. Nevertheless, the issue appears likely to be an important one for the next plan review. As recommended by the Inspector who examined the Core Strategy, a partial review of that plan is under way, with an anticipated submission date in 2017 and adoption in 2018.<sup>14</sup> That will include a revised estimate of the OAHN for the Borough, which might reasonably be expected to be higher than the adopted CS figure. Actual delivery rates during five-year period 2016-2021 will then be taken into account.
22. The CPRE have suggested that the assumptions in Table 1 for infill development and 'windfalls' are likely to be an under-estimate, particularly because no account has been taken of additional supply arising from the exercise of permitted development rights for the conversion of offices to dwellings, which have now been made permanent. However, those rights have been in existence for too short a period to justify an extrapolation to the future. Also, should it prove to be a conservative assumption, it will be a factor to be taken into account in the forthcoming Core Strategy review.
23. Modifications are recommended to the text in paragraph 2.4 (**MM1**) and to Table 1 (**MM2**) to ensure that the plan is sound in the sense of being as up-to-date as possible.

#### *Estimates of site capacity*

24. It is plan policy SADM1 in which sites are allocated over and above those already committed for development, including by the grant of planning permission. Concerns have been expressed in a number of representations<sup>15</sup> about the estimate of dwelling capacity for individual sites given in the right hand column of the table under policy SADM1. This is a detailed table which identifies development constraints and requirements for each site. In several cases these are drawn from factors which have come to light during the processing of planning applications. In some cases planning permissions have

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<sup>13</sup> Page 17 of Doc. HBC/1

<sup>14</sup> Local Development Scheme, April 2015, Doc. BD05

<sup>15</sup> Rep. Nos. 020a; 022a; 031b; 040b; 043d



been granted during plan preparation and the detail under policy SADM1 is no more than a summary of an extant permission, including the 'estimate'. It takes no account of any options which might present themselves for alternative, and in some cases more intensive, forms of development.

25. In paragraph 154 of the NPPF it is stated that 'Local Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.' It is the middle column of the table under policy SADM1, headed 'Site specific requirements' which sets out, in considerable detail, the nature of the development expected on each site and relevant constraints. The last part of the policy, following the table, requires development proposals to meet the site specific requirements but there is no reference there to the estimate of dwelling capacity.
26. The Council have suggested, so that the position is absolutely clear, the addition of text within paragraph 2.9 stating unequivocally that the dwelling estimate is 'no more than an indication of what may come forward on the site'. In the spirit of NPPF paragraph 154 quoted above there should be no room for uncertainty as to how a policy is to be implemented. Consequently, I consider that the additional text is necessary for the plan to be fully effective, and hence sound. It is recommended that the plan be modified accordingly. **(MM3)**

*Policy SADM1, allocated sites H1 - H12, site specific requirements*

27. The third column of the tabulated policy SADM1 provides, in considerable detail, an indication of constraints and policy requirements which will determine the exact form of any development on the 12 allocated sites. In some cases representations relate to matters appropriate in the consideration of planning applications but not directly affecting the soundness of the plan. Relevant site-specific issues are discussed in the following paragraphs.

Site H7, Lincolnsfield, Bushey

28. This allocation is on land which lies almost entirely within the Green Belt immediately to the north-east of the built-up area of Bushey linked by an access road. There is a scatter of buildings related to war-time use. As discussed in connection with the treatment of Green Belt sites in general (see paras. 62-3 below) the site is proposed to be retained within the Green Belt so as to ensure no greater impact on openness than the existing development. The allocated site boundary as shown on the submission policies map is clearly very much linked to the extant permission rather than representing the most logical boundary on the ground. Resolution of flooding issues may facilitate an alternative layout or design to that approved. However, that does not render the plan unsound. As no modification to the plan is warranted, any adjustment to the site boundary as shown on the policies map, for example to include the short section of roadway to the north-east of the main site area, is a matter for the Council to resolve.

### Site H8, Europcar House, Bushey

29. The Council have acknowledged that a prior approval notice has been given for the conversion of the existing offices on the site to 40 dwellings<sup>16</sup>. However, the plan is not unsound to base the estimated number of dwellings for allocation purposes on the capacity assessment in the Housing and Employment Land Availability Assessment (HELAA)<sup>17</sup>, that is for 19 dwellings. Subject to MM3 there would be no constraint on the number. Further relaxation of the permitted development regime to allow redevelopment cannot be assumed at this point in time.

### Site H9, Former Sunny Bank School, Potters Bar

30. This site lies within the Green Belt as defined in the 2003 Local Plan immediately adjoining the built-up area boundary. The school was closed in 2008 but two former school buildings, together with a hard surfaced playground, remain on the eastern part of the site with a former playing field on the western part. The southerly of the two buildings is in use as an Education Support Centre, the northerly is boarded up.
31. The site-specific provisions of policy SADM1 require, amongst other things, that the development layout should include a minimum of 1.4 ha. as open space which is to enable formal sports use and for the developer to make a financial contribution to maintenance. That is repeated in proposal C1 in policy SADM33 'Key Community facilities'. Also, in paragraph 4.76(b), the site is listed as being removed from the Green Belt although that was far from clear on the submission policies map.
32. At the hearing into this proposal the Council conceded that the requirement for 1.4 ha. of open space could not be justified by reference to the conclusions of the Open Space Study. There may be a general deficiency of sports provision in Potters Bar as a whole but because this site has been disused since 2008, and has never been in general public use, it was not included in the study. It is not an existing community facility. The site is not well located relative to the main part of Potters Bar separated by the railway. It may well be that Parkfield Ward is poorly provided for in terms of parks and gardens but that is not what the plan requires. This is quite apart from the fact that policy SADM38 requires open space provision only for developments of 50 dwellings or more (the estimate for this site is 31) and requiring a 1.4 ha. open space as a result of a relatively small development would be disproportionate. Even if such an area is required to remain open for Green Belt policy purposes, a requirement to provide a sports facility would not be fairly and reasonably related in scale and kind to the development of the other part of the site or be directly related to it. It would not meet the requirements of paragraph 204 in the NPPF. Proposals H9 of policy SADM1 and C1 of policy SADM33 are unsound because they are inadequately justified and could not reasonably be required.

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16 The Council's Additional Modification AM11 makes clear that on this basis the estimated number of dwellings could be substantially exceeded.

17 Document EX102, paras. 6.4 and 6.5

33. Options have been considered. One, to split the site with a housing allocation only on the eastern, or north-eastern, part of the site and to retain the western (playing field) part within the Green Belt would result in an awkwardly defined and not entirely logical boundary for the Green Belt. A second option takes account of the fact that even were a specific housing allocation not to be made there would be sufficient land for housing allocated in the plan to meet Core Strategy requirements. Not only that but the school building(s) and their curtilage would come within the definition of 'previously developed land' which, in accordance with paragraph 89 in the NPPF, would mean that the partial or complete redevelopment of that part of the site, provided it would not have a greater impact on the openness of the Green Belt, would be 'not inappropriate'.
34. In view of the above, I conclude that there are no exceptional circumstances to justify a redrawing of the Green Belt boundary in this location. The plan would be made sound by the deletion of proposal H9 in policy SADM1 (**MM4**) resulting in a consequential correction to the statistical calculation of planned housing provision (**MM7**) and a consequential amendment to the plan text in paragraph 4.76(b) (AM31) and to the Policies Map (PM2). The same applies to proposal C1 in policy SADM33, with a reference in paragraph 5.21 (**MM26**) and to the policies map (PM6 and 14).

Site H10, Birchville Court and haulage yard, Heathbourne Road, Bushey Heath

35. The wording in the site-specific requirements section of policy SADM1 provide clear criteria for the assessment of any application. The fact that the site will adjoin the Green Belt means that protecting a sense of openness will remain an important material consideration. The estimate figure of 17 is acknowledged by the Council to be based on an existing permission but MM3 (see para. 23 above) will emphasise that alternatives, with higher numbers of dwellings are possible.

Site H11, Elton House, Elton Way, Bushey

36. Although policy SADM18 covers waste water capacity generally, for clarification of the exact policy requirement, in line with paragraph 154 of the NPPF, additional text is required to ensure this is available before first occupation. It may be good practice to ensure this is done before the development commences but could only be justified in planning terms by first occupation. (**MM5**) The word 'first' has been inserted for clarification.

Site H12, First Place Nurseries, Falconer Road, Bushey

37. This site is occupied by an active pre-school nursery with a car-parking area. The site-specific detail in the policy reflects the discussions held on a planning application which involves redevelopment of the site, including the car park, with housing towards Falconer Road in order to maintain the openness of the Green Belt generally. On that basis, the development of the previously developed land would accord with paragraph 89 of the NPPF and thus the retention of the site within the Green Belt would be sound. However, for the development of the site to reach its full potential the reference to removal of the hardstanding should be deleted. (**MM6**)

38. The policy provision and cross-reference to policy CS19 in respect of the existing nursery use is a reasonable one and it is in everyone's interests that alternative premises be found but the Council's active participation is not something that can be secured through local plan policy.
39. A wider issue has been raised about the retention of housing sites within the Green Belt which is discussed in more detail in paragraphs 62 and 63 below. To re-draw the Green Belt boundary to exclude the Bushey Academy would be a significant change to the extent of the Green Belt for which exceptional circumstances have not been demonstrated, nor is it provided for in the adopted Core Strategy. It is a matter for the review of that local plan document.

Other sites put forward in representations on the plan

40. It is a significant fact, which is not seriously challenged in the representations, that the SADMP identifies sufficient land to meet the overall housing requirements of the adopted Core Strategy over the plan period. Although the housing trajectory suggests that there may be some difficulty in maintaining a 5 year supply after 2021 that is well within the period which will be covered by the partial review of the Core Strategy. That review will include re-visiting the OAHN which, I am informed, may result in a significantly higher housing requirement. In that context, Hertsmere cannot be viewed in isolation owing to the major constraints posed by the Metropolitan Green Belt, the extent of which will be reviewed once more.
41. Several of the unallocated sites advanced are either in the Green Belt<sup>18</sup> or are safeguarded land treated as if it were in the Green Belt pending a review of the Local Plan. I have considered the arguments put forward as to why these sites should be released for housing now, that is by allocation in this plan, including their sustainability characteristics and potential for the delivery of affordable housing but, in view of the land supply position, the plan is fundamentally sound. The allocation of the Green Belt sites would, in effect, be premature pending the Core Strategy review and would be contrary to national Green Belt policy before that exercise is undertaken. A similar situation applies to the safeguarded site at Starveacres<sup>19</sup>; the land is not currently needed to meet the CS housing requirement.
42. Three sites put forward in representations for housing are not in the Green Belt. These are at Croxdale Road, Borehamwood (Old Haberdasher's Sports Ground) and two sites allocated for employment off Elstree Way and Manor Way in Borehamwood.
43. The Croxdale Road site is in active use although on a private basis by the Old Haberdashers' club. The pitch does not come up to current Sport England standards and the club seeks relocation to Radlett. However, as the Council point out the ground is a long-standing open space within the built-up area of Borehamwood. It is allocated as 'Major Open Space' under policy SADM35 in the submitted plan and the land is actually owned by the Borough Council who would wish to see it remain as open space

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<sup>18</sup> Representation Nos. 027, 054, 055, 056b

<sup>19</sup> Representation No. 019

independently from the current users. On that basis, it cannot be assumed that the site is available for development. The site should be evaluated against any other opportunities which might present themselves to meet housing need as assessed in the forthcoming Core Strategy review, taking a balanced view of the contribution the site makes to open space provision. In view of the housing supply position there is no pressing need for allocation in this plan.

44. Manor Way marks the eastern boundary of the Elstree Way Corridor Area Action Plan (AAP). Within that area the Council have taken a very positive approach to the redevelopment of business and commercial sites for high density housing. A significant element of the future housing provision for the Borough is within the AAP area.
45. The two sites in question, on the corner of Elstree Way and at Manor Point clearly have the potential for redevelopment also but they are entirely within an area allocated for employment uses which stretches eastwards along Elstree Way from the Manor Way roundabout. They do not immediately abut existing residential areas which are located to the south of Durham Road. The HELAA indicates that there is only 1.4 years supply of industrial land and 3 years supply of office accommodation at past take-up rates available in the Borough. There may be some vacant B1 units to the east of Elstree Way but vacancy rates are not unduly high.
46. The HELAA refers to work commissioned jointly with adjoining authorities in South Hertfordshire to assess future employment land needs. This will inform future land use plans. With the review of the Core Strategy under way, which will re-assess employment land needs, it is right that decisions should not be taken in advance to release any further land from employment allocation particularly as there is no immediately pressing need to identify more land for housing. The Core Strategy is programmed to be adopted in 2018, whereas it is noted that relocation of the existing users to Chelmsford is not expected until 2019.
47. The SADMP achieves one of its principal aims of identifying sufficient land to be developed over the plan period to meet the CS requirement for general housing. There is no justification for bringing further land into the development 'pool' and certainly no case for looking to development on any additional Green Belt land or safeguarded land other than that identified in the plan.

**Issue 2 – Whether the plan makes adequate provision for affordable housing and whether policy SADMP4 requiring contributions towards affordable housing from the development of sites for between 5 and 10 dwellings is sound in the light of Government policy.**

*Affordable housing provision overall*

48. The adopted Core Strategy, in paragraphs 3.19 - 32, sets out in some detail the position with regard to the provision of affordable housing in the Borough. Policy CS4 sets an overall affordable housing target of 1140 dwellings to be delivered between 2012 and 2027 with either 40% or 35% of dwellings, depending on location, on sites for over 5 dwellings or 0.2 ha. area. The policy provides for commuted payments towards off-site provision only in exceptional circumstances. Paragraphs 3.33 – 35 and policy CS5 deal with affordable housing in rural areas on 'exception sites'. Policy CS6 and the associated text deals with housing mix.
49. The delivery of affordable housing in the three years 2012-15, at 210 has averaged 70 dwellings a year, marginally below the annual average (76) which would be required to deliver 1140 affordable dwellings by 2027. However, in addition, the Council have collected around £2.5 m. commuted payments towards off-site provision. The Council state that, with existing commitments and allocations the average on-site delivery rate to 2020 will be around 63.5 dwellings a year<sup>20</sup>.
50. A contingency arrangement is identified in paragraph 9.8 of the Core Strategy should delivery fall below the required annual average over a rolling three year period. That position had not been reached as at April 2015, the latest available date for housing. Should it be reached, a number of corrective actions are set out which do not include the identification of additional sites for housing allocation. As the purpose of the SADMP is to deliver the Core Strategy requirements I do not find the plan unsound on the basis that insufficient land is identified to deliver the affordable housing requirement.
51. Moreover, I accept that the delivery of affordable housing faces a significant degree of uncertainty at the present time. Section 5 of the Housing and Planning Act 2016, provides that, subject to Regulations, the Secretary of State may require the provision of discounted starter homes available for first-time buyers as a proportion of new housing on sites above a certain size<sup>21</sup>. Such provision appears likely to alter the factors which have been taken into account in determining overall requirements for affordable housing within any housing market area as well as viability considerations. That is in addition to the introduction and retention of permitted development rights for office to residential conversions which effectively exempt such schemes from any affordable housing requirement. Also, as discussed below, the Government has set out in the Planning Practice Guidance that the provision of affordable housing, or contributions towards such provision, may not be sought through s106 obligations for any site of 10 dwellings or less, and which have a maximum combined gross floorspace of no more than 1000sqm.

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<sup>20</sup> Information taken from document HBC/1 derived from the updated AMR, doc. EX3c.

<sup>21</sup> A technical consultation on such matters has been undertaken.

52. In the circumstances, the appropriate way forward is in the revision of the SHMA as part of an objective assessment of housing needs which will be an important part of the review of the Hertsmere Core Strategy currently under way.

*Policy SADM4 and paragraphs 2.24-27.*

53. As submitted, paragraphs 2.24-27 in the plan, provide a background and context for the inclusion of policy SADM4 which states that the Council will seek financial contributions to support the delivery of affordable housing when the development proposed is for between 5 and 10 residential units (inclusive). Even though the Written Ministerial Statement of 28 November 2014 is acknowledged in paragraph 2.25, the basis for pursuing such a policy is that the Core Strategy Inspector concluded, after examination, that policy CS4 (as modified with a minimum site size of 5) would not compromise the deliverability or viability<sup>22</sup> and that the policy has been successfully implemented since adoption of the Core Strategy. A number of examples have been provided during this examination to emphasise these points<sup>23</sup>.
54. Following an Order by the Court of Appeal on 13 May 2016, the November 2014 Ministerial Statement now has legal effect<sup>24</sup>. The national policy position is, therefore, as it was at plan submission. The terms of the statement, and the PPG, are very clear, that contributions for affordable housing and tariff-style planning obligations should not be sought from development of 10 units or less. Despite this policy SADM4 states that Hertsmere Borough Council intend to do exactly that, directly contrary to stated Government policy.
55. Policy CS4 already provides a basis for negotiation with developers to obtain a proportion of on-site affordable housing provision on smaller sites but the Ministerial Statement will be an important material consideration which appears likely to seriously affect the Council's ability to implement that policy in future. Policy SADM4 seeks to extend the scope of policy to cover off-site provision through commuted payments but there would need to be a very strong justification indeed for policy SADM4 to be at all effective. Even though the local evidence shows that there is a significant requirement for affordable housing in the Borough, and that market conditions are such the viability of small sites is unlikely to be undermined, there is no analysis which would suggest that this is such an exceptional situation as to justify a departure from the national policy on seeking 'tariff-style contributions' from small sites. Policy SADM4 would be ineffective and unsound for that reason. The only part of the section dealing with general affordable housing provision which might reasonably remain is the factual statement in paragraph 2.24. For the plan to be sound policy SADM4 and the text in paragraphs 2.25 to 2.27 should be deleted in their entirety. **(MM9)**

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<sup>22</sup> Core Strategy Inspector's Report, paragraph 47.

<sup>23</sup> E-mail from Council, 23 May 2016

<sup>24</sup> Planning Policy Guidance, paragraph 031, Ref. ID 023b-031-20160519

**Issue 3 - Whether the plan provision meets the requirements of the adopted Core Strategy policy CS6 and is compatible with national policy on gypsy and traveller provision.**

56. Core Strategy policy CS6 states that 9 additional pitches to meet the needs of gypsies and travellers to 2011 will be identified and allocated with a further 2 pitches a year until 2017. The Council have explained that the figures are derived from the then extant Regional Spatial Strategy which identified a need for 53 pitches by 2011. On this basis the cumulative target by the year 2017/18 will be 67. By the end of 2013/2014 there were 58 authorised pitches in the Borough.
57. Policy SADM 5 allocates sites for an additional 9 pitches which, in accordance with the Core Strategy, satisfies the need until 2017/18. Although 6 of those pitches already exist they have not been counted previously because they are unauthorised. 3 pitches at Sandy Lane (site GT1) are additional but on an existing site. All three proposed sites are in the Green Belt but they are existing sites and the plan would result in no more than a marginal intensification which would have no effect on the openness of the area. The locational criteria in policy CS6 are also met.
58. To include provision only until 2017/18, which is now less than two years away, is contrary to the Government guidance: 'Planning Policy for Traveller Sites' (PPTS) which requires the identification in Local Plans of specific, deliverable sites to provide 5 years' worth of sites and specific, developable sites or broad locations for growth in years 6-10 and, where possible, years 11-15. The SADMP is aligned with the Core Strategy and identifies a 5 year supply from the adoption of that plan in 2013, but not beyond.
59. The issue of the provision for gypsies and travellers was considered by the Inspector who examined the Core Strategy. She referred to the then recently issued PPTS and accepted that an early (partial) review of the Core Strategy would include a re-assessment of gypsy and traveller accommodation needs<sup>25</sup> and recommended a modification to CS paragraph 3.39 to state that fact.
60. The 'fresh' Gypsy and Traveller Accommodation Assessment (GTAA), mentioned in paragraph 2.31 of the SADMP was finalised only after the start of this examination. It suggests a need for 25-29 additional pitches up to 2028<sup>26</sup> but with provision 'frontloaded'. That evidence is intended as an input to the CS review. As the SADMP is intended only to deliver the policies of the adopted Core Strategy it could not reasonably be expected to identify the additional sites required beyond 2017/18. The SADMP is sound in respect of the provision of sites for gypsy and traveller accommodation.
61. Nevertheless, the LDS indicates that the partial review of the Core Strategy is not expected to be submitted before 2017 with adoption in 2018. As it is indicated that the review will include land allocations, it may be expected that allocations will be made for gypsy and traveller sites to meet the needs

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<sup>25</sup> Core Strategy Inspector's report, paragraph 50

<sup>26</sup> Documents EX101 and EX101a, alternative assumptions



identified in the GTAA. Until those sites are identified there will be an increasing disparity with the requirements of the PPTS as stated in paragraph 53 above. Although there is potential for some 'windfall' sites to come forward in accordance with the criteria in Core Strategy policy CS6, that must be far from certain. It is important that the accommodation needs of gypsies and travellers are met as they arise. The timescale involved is short. In order to minimise the risk of further unauthorised sites, especially in the Green Belt, the Council will need to accord the highest priority to the identification of specific, deliverable sites and to undertake public consultation thereon.

**Issue 4 – Green Belt policy issues – a. whether the approach to the allocation of sites for housing within the Green Belt is consistent with national policy guidance; b. whether the application of policies on the 'safeguarding' of land for future development, Key Green Belt sites and development standards provide a clear basis for development management decisions; c. whether the policies covering the definition of Green Belt (including village envelopes) are sufficiently clear of meaning and boundaries have been appropriately defined**

*a. The approach to the allocation of sites for housing within the Green Belt*

62. Given the purposes of the Green Belt, as stated in paragraph 80 of the NPPF, particularly in preventing urban sprawl and in protecting the countryside from encroachment, it is at first glance somewhat surprising that housing allocations H5, H7 and H12 are proposed to remain in the Green Belt. On the other hand, two allocated sites, H4 and H9, are proposed to be removed from the Green Belt. Core Strategy policy CS13 provides for changes to Green Belt boundaries only at Shenley Hospital and the employment site East of Rowley Lane.
63. Allocations H4 and H9 abut the urban edge in Bushey and Potters Bar. They contain existing buildings but also open land. In principle, removal of the sites from the Green Belt would allow the drawing of a logical boundary which would meet the relevant requirements of paragraph 85 of the NPPF<sup>27</sup>. Allocations H5, H7 and H12 do not immediately abut the settlement boundaries. They contain a good proportion of previously development land and buildings and the approach taken by retaining them in the Green Belt is to ensure that the openness of the Green Belt as a whole is not compromised. Most importantly it would not be possible to draw a rational Green Belt boundary around them within the terms of paragraph 85. On that basis, I accept that the effect of treating these sites as allocations is not so dissimilar to that which would result from the application of paragraph 89 for the consideration of the redevelopment of previously developed land in the Green Belt. The plan is sound in that respect.

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<sup>27</sup> But see conclusions on allocation H9 in paragraphs 30-35 of this report

- b. *Safeguarded land (policies SADM2 and SADM10); Key Green Belt Sites (policy SADM25) and Development Standards (policy SADM27)*
64. Safeguarded land for housing (Policy SADM2). The review of Green Belt sites and boundaries undertaken in 2014<sup>28</sup> provides adequate justification for the choice of sites for development and amendments to Green Belt boundaries. The Council acknowledge that it might be expected that safeguarded sites would be brought forward for development before Green Belt land but the picture is 'muddied' in Hertsmere by the incidence of so many areas of previously developed land. The safeguarded land is clearly 'earmarked' for future development but there is no immediate need for its development and it is relatively open in character, as stated in paragraph 2.12. The Starveacres site (16 Watford Road, Radlett), for example, is a bungalow set in extensive gardens.
65. The Council have indicated<sup>29</sup> that a new Green Belt assessment is to be commissioned shortly in the context of the Core Strategy review. However, although the current LDS entry for that review plan indicates that land allocations will be made, there is no mention of a review of Green Belt boundaries, which may be an omission. Furthermore, the Council have agreed that the reference in policy SADM2 to the release of safeguarded land needing to await a review of 'this plan' might be taken to be a review of the SADMP which is not programmed at all in the LDS. To be fully compliant with the LDS this should be a reference, more generally, to 'the Local Plan' which also includes the CS.
66. There was some discussion during the hearings about the origins of the provision of policy SADM2 that safeguarded sites 'will be treated as if they are in the Green Belt'. There is nothing in the NPPF which supports such an approach nor was there in PPG2<sup>30</sup>, which was extant in 2003 when the Hertsmere Local Plan (HLP) was adopted. The approach of treating safeguarded land as subject to 'normal Green Belt policy' to meet longer term (post 2011) needs is found in HLP policy C2 together with policy H4 which refers to a 'presumption against inappropriate development'. Both of those policies have been saved and so remain in effect today<sup>31</sup>. That is not, however, a justification for seeking to apply Green Belt policy to land which has been taken out of the Green Belt. As explained below, there is no need to do so and it may cause confusion.
67. Following the hearings, the Council suggested that the text of paragraph 2.13 in the plan be amended (as an additional modification) by the addition of the words 'The sites are reserved for housing development in the future; in the meantime their use should respect their former Green Belt designation and not prejudice future housing development.' But they did not suggest any change to policy SADM2 itself. I considered that the words 'and not prejudice future housing development.' were important because that is the central tenet of the long-standing concept of safeguarded land. It is also a statement of policy. Consequently, I asked the Council to undertake consultation of a proposed

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<sup>28</sup> Document EB28

<sup>29</sup> Document HBC/1, paragraph 3.29

<sup>30</sup> In particular, paragraphs 2.12-13 and Annex B

<sup>31</sup> They are not included in the list in document BD01a

main modification (MM8) adding the sentence 'Any proposal should not prejudice future housing development.' The Council have also consulted on a revised additional modification (AM13) to paragraph 2.13.

68. Although no further representations have been made on either MM8 or AM13, I now recognise that retaining the words 'Until that time the sites will be treated as if they are in the Green Belt: there will be a presumption against inappropriate development.' could actually be a contradiction of the final sentence to be added by consultative draft MM8. That is because several types of development which are 'not inappropriate' in the Green Belt by virtue of paragraph 89 of the NPPF would actually be permanent and might well prejudice future (comprehensive) housing development, contrary to the purpose of safeguarded land as stated in the fourth bullet point of paragraph 85 to the NPPF. Development plan objectives are being confused with those for development management.
69. It is only the final sentence added by draft MM8 which is a proper reflection of national policy on safeguarded land. It is, actually, a stronger policy constraint than for the Green Belt as in paragraphs 87-92 of the NPPF. I now consider that policy SADM2 should be modified by the deletion of any reference to the continuing treatment of the safeguarded sites as if they were in the Green Belt, because that is not a sound approach. The whole of the additional text suggested by the Council for inclusion in paragraph 2.13 as AM13 should be substituted along with the additional sentence in draft MM8 for the plan to be sound. The full text of the revised **MM8** is in Appendix A to this report.
70. Safeguarded land for employment (policy SADM10). The national policy approach to safeguarding land for future employment use is the same as for housing or any other kind of 'permanent development'. Policy SADM10 contains almost identical wording to policy SADM2 on treating the land as if it were Green Belt land until such time as development might be proposed following a plan review. Even though the Rowley Lane site is proposed to be removed from the Green Belt and safeguarded for the first time in this plan<sup>32</sup>, the same national policy considerations apply and the reference to the continuance of Green Belt policy should be removed. The consultative draft of **MM15** is amended accordingly and for consistency with MM8. It is the last sentence making it clear that the use should not prejudice future (employment) development which most closely reflects long-standing national policy on safeguarded land. This is particularly pertinent on this site given the extent of the previously developed land on the 'Holiday Inn' site.
71. The supporting text to policy SADM10, in paragraph 3.9 has been consulted upon as part of MM15 and, as with MM8, the whole sentence is now included in a revised MM15 to replace the deleted sentence, as above. A concern raised by Sport England on the replacement of playing field provision is properly clarified by an addition to paragraph 3.9(b), included as part of MM15 to ensure consistency with national policy on sports provision.

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<sup>32</sup> The principle is established by the Core Strategy, policy CS8.

72. Key Green Belt Sites (policy SADM25). There is a number of quite large institutional buildings, such as schools, surrounded by extensive grounds and thus of an essentially open character which have been included within the Green Belt. In the 2003 Local Plan, they were identified as Major Developed Sites in the Green Belt. The former PPG2, Annex C, guidance has been replaced by the last bullet point of paragraph 89 in the NPPF which states that limited infilling or partial or complete redevelopment of previously developed land is regarded as 'not inappropriate' provided that it 'would not have a greater impact on the openness of the Green Belt and the purpose of including land within it.'
73. The focus of the policy is on the areas defined as 'envelopes' where infilling or redevelopment 'may be appropriate' but the use of that word is unclear in a Green Belt context and, given NPPF paragraph 89, could cause some difficulty in interpretation for decision-making purposes. With that in mind, the Council accepted that the whole policy should be re-cast to accord with paragraph 154 of the NPPF, hence to be sound. I do not accept that the policy is wholly unnecessary. It does provide a local context. In particular, the associated text in paragraphs 4.80-86 in the plan provides important clarification as to the way the policy is to be applied, especially in relation to school sites, and some significant amendments are made for further clarity of meaning. A draft modification was put forward as MM21.
74. A representation on the draft modification draws attention to that part of the draft modified policy which would restrict development outside the envelope to 'appropriate' development. That goes beyond national policy in not permitting inappropriate development in very special circumstances and serves no useful purpose. The sentence should be deleted and national policy applied.
75. A representation by the CPRE on the draft MM21 draws attention to the difference in wording in criterion a) of the proposed revised policy, in the reference to development not causing 'significant harm' to the openness of the Green Belt, from the term 'greater impact' used in paragraph 89 of the NPPF. A reference to 'impact' rather than 'harm' is also closer to that of the submission plan policy. It is notable that criterion (i) of HLP policy C18 is very close to the wording of the NPPF. It will be for the Council to assess the impact on the openness of the Green Belt taking account of the effect the existing development already has. Small extensions or infilling would not necessarily have a materially greater impact on the Green Belt. I recommend a revised Main Modification, **MM21**, to policy SADM25 which includes identical wording to the last bullet point of paragraph 89 in the NPPF. Any proposals of the kind mentioned in revised paragraph 4.85 would fall to be considered in the context of the revised policy which is adequately framed to protect the Green belt from harmful incursion.
76. A number of representations relate to the precise alignment of the 'envelopes' as shown in red on the submission policies map but do not have any implications for the soundness of the policy itself. The submission policies map also shows a blue line around the whole site which has no clear significance in policy terms. It is to be omitted.

77. Development Standards (policy SADM27). As submitted, the policy provides only that applications 'will be assessed against' a list of principles. It is not stated, explicitly, what will happen as a result of such assessment. Therefore, it is not clear from the policy 'how a decision maker should react to a development proposal'.<sup>33</sup> Consequently, for the plan to be sound, the Council have put forward revised wording for the introductory paragraph to the policy, which is recommended **(MM23)**. Contrary to a representation on the draft modification, I consider that the policy does add value in providing a context for the consideration of development which is 'not inappropriate' against detailed planning criteria.
- c. *Green Belt boundary definition (policy SADM23), including village envelopes (policy SADM24) and South Mimms (policy SADM26)*
78. Green Belt boundaries. As submitted, policy SADM23 adds very little to the local plan, taken as a whole. It is clearly intended to give effect to the last paragraph in Core Strategy policy CS13 by defining the Green Belt boundary accurately on the policies map, making it clear which policies apply in that area. However, it is not necessary to refer to the 'amended' boundary because that factor will be of no relevance once the plan is adopted. The reference within the policy to SADM23 is an error and should read SADM27. With those corrections I consider the policy sound. **(MM19)**
79. As stated in Core Strategy Policy CS13 the Green Belt boundary remains unchanged except in two named locations. Detailed alignments have also been subject to a review<sup>34</sup> during plan preparation to ensure they comply with national policy guidance. These are listed in SADMP paragraph 4.76. The changes have been adequately justified.
80. An allocation has been made (H10) to the west of Heathbourne Road, Bushey, on land which is safeguarded under the 2003 Local Plan. The retained safeguarded land to the north includes some buildings but at lower density. With the entirely logical removal of the Spire Hospital site to the north of Clay Lane from the Green Belt, the boundary will follow the line of Heathbourne Road throughout. That is a highly defensible boundary. There is a clear distinction between land to the west of the road, which fringes Bushey, and that to the east which, although there are some small groups of houses as well as large individual houses in extensive grounds, presents a generally open character. There are no exceptional circumstances which would warrant any further change to the boundary in this area.
81. A representation has been made seeking the redrawing of the boundary to the rear of 29, 31 and 37 Heath Road, Potters Bar on the basis that it currently cuts across the extensive rear garden of No. 29 and that a clear and defensible boundary might be drawn further west. The same issue was considered by the inspector for the 2003 local plan since when there has been no change on the ground. I am informed of the extensive history of the site and I visited the gardens to assess the situation.

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<sup>33</sup> Paragraph 154 of the NPPF

<sup>34</sup> Document EB28

82. Although the NPPF has replaced PPG2 since the local plan inquiry there has been no change in the national policy guidance on the process for defining Green Belt boundaries which are expected to endure in the long term. Most significantly, paragraph 83 of the NPPF advises that boundaries should only be altered in exceptional circumstances. I consider that the Council are correct to regard the land in question as transitional between the residential area and the agricultural fields to the west. Despite being partly included within a residential curtilage the character is essentially open and the land makes a contribution to Green Belt purposes. That situation has not changed since 2003. It has not been demonstrated that there are exceptional circumstances which would justify a re-drawing of the Green Belt boundary in this location. I understand that an error on the submission policies map at 9 Green Meadow is to be corrected.
83. Village Envelopes. Limited infilling within villages is one of the categories of development which is listed in paragraph 89 of the NPPF as an exception to the policy that the construction of new buildings should be regarded as inappropriate in the Green Belt. As worded in the submission plan, policy SADM24 is not consistent with paragraph 89 by saying that such infilling is appropriate if it complies with policy CS13, which includes additional criteria. The Council propose a modification to make it clear that limited infilling development will be permitted if it meets the requirements of policy CS13. That avoids any confusion with the question as to whether it is (or is not) 'appropriate' in Green Belt terms, rather than in common parlance. It is 'not inappropriate' but may not be an acceptable form of development for other reasons such as its effect on the character or appearance of the area. That is a sound approach. **(MM20)**
84. South Mimms Special Policy Area. Policy SADM26 is unusual in its context applying as it does to the immediate surrounds of a nationally renowned motorway service station. A point of detail has been raised by Highways England which requires additional wording to ensure that the policy is fully effective and thus sound. It is also one of a number of policies which use the term 'supported' which does not make it clear what action the local planning authority might take in dealing with a planning application, as required by paragraph 154 of the NPPF. A modification is put forward to clarify these points. **(MM22)**

## **Issue 5 – Whether the plan policies on employment (policies SADM6-9) are likely to be effective and provide a clearly justified basis for decision making in the Borough**

85. Policies SADM6 to 8 inclusive have the same format with the purpose to link between Core Strategy policies and the areas to which they relate which are to be shown on the policies map. As a result, they do not add to the policy provisions of the plan in any way. A revised wording for each of these policies is necessary to ensure that the policies provide an effective basis for decision making and thus conform with paragraph 154 of the NPPF. **(MM 11, 12, 13)**
86. In Chapter 3 of the plan, most of the justification for the suite of employment policies is given in the introductory paragraphs 3.1-3.6. Paragraph 3.2 sets out the position in respect of the Government's introduction of permitted development rights for the change of use of offices and warehouses to residential use. However, this has been overtaken by events. An amendment Order to the GPDO came into effect on 6 April 2016. There is no exemption for 'strategically important' offices and the rights for change of use from Use Class B1(a) to residential use (Class C3) are permanent. The change of use of laundrettes to residential is also permitted but the change of use of light industrial premises Class B1(c) does not come into effect until October 2017. The only additional consideration within the prior approval regime is to allow noise factors to be taken into account. Most of the text in paragraph 3.2 must be deleted for this reason. **(MM10)**
87. As the possibility of extending permitted development rights to the re-development of office sites for residential use remains under consideration it would not be sound to include reference to this in the plan at the present time. There is no reason why the implications of the changes to the GPDO on office provision locally should not be mentioned and it is entirely a matter for the Council whether to pursue Article 4 directions, the effect of which is to require applications for planning permission in the areas to which such directions might apply. New supporting text to this effect is recommended for inclusion immediately after paragraph 3.9, preceding policy SADM9, as part of a modification to the policy itself.
88. There is no practicable means for the Council to 'resist', as a matter of principle, changes of use which are permitted development. Policy SADM9 cannot be applied in the consideration of prior approval applications. It is ineffective and, therefore, unsound in that respect. This reference is recommended to be deleted by **MM14** together with clarification of the means to implementation. It is self-evident that any policies can only be effective if they are within the powers and limitations provided by Government legislation; that does not need to be stated in the plan.

## **Issue 6 – Whether the plan policies for Open Land and the Environment provide an adequate context for the consideration of planning proposals which will ensure their effective implementation**

### *Biodiversity and Habitats – policy SADM11*

89. The policy provides a local context for the implementation of national policy primarily as a development management policy reflecting paragraph 118 in the NPPF. Much work has been done outside of this plan as made clear in the list of documents under paragraph 4.5. The suggestion that the policy should be strengthened by a commitment to there being 'no net loss of biodiversity' would be a step further than paragraph 109 of the NPPF in which it is stated that planning authorities should seek to minimise impacts to biodiversity and provide net gains, where possible, to contribute to the aim of halting the decline in biodiversity. That is a strategic aim, not one necessarily to be applied to individual development proposals to which paragraph 118 applies. Also, policy CS12 requires all proposals to 'conserve and enhance' the natural environment.
90. The strengthened monitoring framework (see paragraph 128 below) is to include a specific reference to the use of the Biodiversity Impact Assessment Calculator when appropriate. That is adequate; a policy cannot be used to dictate the use of any particular assessment methodology.
91. There is no mechanism which would permit amendments to be made to the adopted policies map other than following, and as a result of, a change in a development plan policy through review or alteration which necessitates such change. Therefore, for procedural reasons, the second sentence in the first paragraph of the policy must be deleted. **(MM16)**

### *Trees, Landscaping and Development – policy SADM13*

92. Although there is no specific reference in the NPPF to trees other than aged or veteran trees the thrust of this policy is not inconsistent with the guidance in NPPF paragraph 118 which would, in any event, be a material consideration. Trees clearly make an important contribution to the landscape and provide an important habitat. For clarification of the policy, and hence for its effectiveness, it should be stated that for trees subject to a TPO only the loss, or likely loss through development, of healthy and high quality trees would result in a refusal of permission. The addition of a reference to the replacement of trees which are lost through development would also help to ensure that the impact of development on the environment is minimised, in line with national policy. The policy also provides a proper context for the SPD to which reference is made in the second part of the policy. Modifications are recommended in **MM17** including consequential amendments to paragraph 4.11 of the supporting text.

### *Sustainable Drainage Systems – policy SADM16*

93. This policy is generally in line with the provisions of the Flood and Water Management Act 2010 under which sustainable drainage schemes are required for all major schemes and is not unduly onerous. The policy sets a



threshold of 10 dwellings or more or 1000 sq.m. of floorspace which is, however, only a partial interpretation of the definition of major development in the Article 2 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 (DMPO). For future resilience and to avoid any possibility of misinterpretation the reference should be to the DMPO itself. Although the County Council, as Lead Local Flood Authority, may set standards for SuDS a development plan policy cannot simply require compliance with such standards because the plan should be self-contained. That reference is not sound and should be deleted. **(MM18)**

#### *Heritage Assets – Policy SADM30*

94. The section of policy SADM30 dealing with historic parks and gardens only lists the factors which the authority will consider in relation to a proposal which may affect such an heritage asset. That does not give any indication as to how the decision-maker would react to such a proposal as required by paragraph 154 of the NPPF. A re-wording is recommended to rectify that element of unsoundness. **(MM24)**

### **Issue 7 – Whether the plan makes adequate and appropriate provision for the future expansion of educational facilities**

#### *The priority accorded to the expansion of existing primary schools*

95. Although there are several statements in the plan which indicate a generally positive stance towards new school provision, criterion (v) in policy SADM33, which deals specifically with the provision of new schools, indicates a priority for the expansion of existing schools. This is justified on the basis that where there is capacity for expansion, for example from a 1FE to 2FE primary school, that makes more efficient use of existing sites.
96. It may well be difficult to identify sites for new schools in advance by way of allocation in the local plan given the uncertainty in capacity calculations arising from the possible development of free schools. Nevertheless, a very clear steer is given by paragraph 72 of the NPPF together with the Ministerial Statement in August 2011<sup>35</sup> (post-dating the NPPF) which does not distinguish between the opening of new schools and the expansion of existing ones. Not only is the criterion not 'positively prepared' but, as a development management policy, it is likely to be ineffective in the face of Government policy. It is not unreasonable to expect evidence to supporting a proposal for a school on a new site and a modification to criterion (v) to state that would remedy the situation. Policy SADM33 sets criteria for the consideration of proposals of community facilities in general and, as such, accessibility by sustainable transport modes is clearly a desirable objective in line with the NPPF even if it is not always obtainable. However, the policy requires modification to provide a clear basis for decision taking in line with Paragraph 154 of the NPPF and to delete the reference to Sunny Bank School for consistency with MM4. **(MM26)**

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<sup>35</sup> Policy Statement on Planning for Schools Development, 15 August 2011

### *School provision in Borehamwood*

97. The County Education Authority have presented evidence as to the need for additional educational provision in Borehamwood. This indicates a need for an additional secondary school before the end of the plan period in 2027. As the identification of a suitable site may be a complex process it should be a matter considered within the Core Strategy review given the important sustainability factors such as facilitating walking and cycling for the 'journey to school'.
98. As stated in paragraph 5.22 of the plan, an allocation has been made in the Elstree Way Corridor AAP for a new 2FE primary school. Although the HBC have agreed to delete a reference to the adequacy of the case for a new school site, that, along with a reference to another site 'being preferred', are not statements of policy and do not affect the soundness of the plan.

### **Issue 8 - Whether Green Space policies SADM35 (Major Green Space) and SADM36 (Local Green Space) are consistent with national policy guidelines and whether there is adequate justification for the identification of the Local Green Spaces included in Appendix G, particularly site BH007, the Paddock, Elstree Road, Bushey.**

#### *The policy approach*

99. The submitted plan contains three policies, SADM35 to 37 inclusive. These provide for a hierarchy of green spaces. Policy SADM35 applies to the larger areas, termed 'Major Green Space'; policy SADM36 applies to the smaller, Local Green Spaces. A list of all areas identified as either Major or Local Green Space is given in Appendix G of the plan and the boundaries are shown on relatively large scale Ordnance Survey plans on pages 155 to 169 inclusive in Appendix A. Also in the section of the plan dealing with green space is a policy (SADM37) for 'Minor Amenity Land' which areas are not shown on any map and a general policy, SADM38, relating to new and improved public open space. No issues are raised in respect of the last two policies.
100. The wording of policies SADM35 and 36 is very similar. Both require that 'exceptional circumstances' be demonstrated before development which would result in the loss of the green space might be permitted and, even then, would only be considered acceptable if certain criteria are met; the same four criteria in each case.

101. Two aspects of this approach give rise to concern with regard to the soundness of the plan, especially in terms of its consistency with Government policy as expressed in the NPPF<sup>36</sup>. Firstly, paragraph 78 in the Framework states that local policy for managing development within a Local Green Space should be consistent with policy for Green Belts. What might be termed the 'test' of 'exceptional circumstances' applies to changes to Green Belt boundaries in local plans, not to development management. National Green Belt policy, as set out in paragraphs 87 and 88 of the NPPF, is that 'very special circumstances' should exist to justify permission for inappropriate development. The Council have accepted that, to be fully consistent with the national policy, policy SADM36 should require 'very special' rather than 'exceptional' circumstances and that is necessary to make that aspect of policy sound. **(MM 28)**
102. Secondly, it is clear from paragraph 78 in the NPPF that the application of a development management policy which is consistent with Green Belt policy applies only to Local Green Spaces and not more widely to other types of green space. Therefore, submitted plan policy SADM35 in requiring exceptional circumstances to be demonstrated before permission might be granted for development which would result in the loss of a Major Green Space cannot be regarded as being consistent with national policy. Furthermore, even though the policy is read with CS policy CS19, it does not adequately reflect the thrust of paragraph 74 in the NPPF to take account of any continuing need; to allow for alternative enhanced provision elsewhere and for the weighing of the need for alternative recreational or sporting facilities with any loss of open space.
103. In response to the above concerns, the Council have suggested a significant modification. The policy would no longer refer to Major Green Spaces but would apply to all open spaces other than Local Green Space. It would also apply to existing sports and leisure facilities. The replacement policy would be fully consistent with the Framework and it is recommended as a Main Modification. **(MM 27)** The first part of the modified policy meets Sport England's concern about the quantity and quality of provision. The last paragraph does refer to considerations beyond those of paragraph 74 of the NPPF but it in setting a test of 'significant' harm is not unduly restrictive. It provides for a balanced consideration of any proposals for development on green space.

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<sup>36</sup> An e-mail was sent to the Council on 10 December seeking further justification of the plan approach to green space policy. After considering the Council's response, on 29 December a formal letter was issued, asking the Council to give further consideration to making modifications to the plan to ensure full consistency with national policy. As a result further changes were suggested by the Council which were consulted upon during the period 19 February to 29 March 2016. All representations received during that period have been considered.

*The justification for identification of sites as Local Green Space*

104. It is explained in paragraphs 5.29 and 5.30 in the plan that an Open Spaces Study<sup>37</sup> had been carried out together with a Green Spaces and Amenity Land Report<sup>38</sup> which is described as a 'rigorous criteria-based approach'. The assessment recommended the identification of the three types of open space and policies to be applied to them. It recommended areas to be defined as Local Green Space and was subject to consultation to enable local communities to make a case for the protection of areas of special local significance.
105. The Amenity Land Assessment is dated December 2012 and, therefore, post-dates the NPPF. This is acknowledged in the main report but the under-lying methodology for the identification and classification of open spaces is based upon the then still extant companion guide to Planning Policy Guidance 17. That was not withdrawn until March 2014 upon the issue of the national Planning Policy Guidance.
106. The methodology used for the classification of open spaces has been used to identify 60 areas as Local Green Spaces (LGS) as listed in Appendix G to the plan. That is a significant number and although the NPPF does not suggest an upper limit on the number of such spaces identified in any one plan area, the wording in paragraph 77, that 'the designation will not be appropriate for most green areas or open space', coupled with the criteria for selection, does suggest that it is a designation which is likely to be applied only to the most special and locally significant green spaces. It might be expected that there would be a particularly robust justification for each and every site if so many were to warrant LGS status.
107. Criteria used in developing the 'value framework' are given in Table 3 of the Amenity Land Report and the weightings attributed to each 'value factor' is in Table 4. The justification for individual weightings is not entirely clear, nor the reason to choose an overall score of 11 as a lower threshold for inclusion in the LGS category. The detailed site-by-site scorings were submitted at a later stage in the examination<sup>39</sup>.
108. In response to my request, the Council submitted a revised scoring matrix and re-visited the approach to weightings with particular emphasis given to obtaining a degree of 'read across' between the criteria used in the Amenity Land Report and the criteria listed in the bullet points under paragraph 77 of the NPPF. A revised lower threshold for the identification of LGS of 30 points has been adopted, although it is acknowledged to be 'somewhat arbitrary'<sup>40</sup>.

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<sup>37</sup> Evidence Base Document EB25

<sup>38</sup> EB26

<sup>39</sup> Document EX2b

<sup>40</sup> Document HBC/1, para. 7.6

109. The increase in emphasis given in the weighting attributed to 'amenity benefits and sense of place' and 'cultural and heritage benefits' is a reasonable interpretation of the NPPF paragraph 77 criteria and equates with a judgement of when a site is truly 'demonstrably special' and of 'particular local significance' to the local community. With a weighting of 5 (increased from 4) those two value factors make up a very large part of the total score. A valid point is made in representations that a 'read across' from the NPPF might suggest that the 'richness of wildlife' would equate with 'ecological benefits' which retains a weighting of only 2 with no clear justification. Furthermore, weightings given to other value factors do not correlate particularly well with paragraph 77, for example 'structural and landscape benefits'.
110. The methodology was devised to meet PPG17 open space criteria and, as with any complex system, it has shortcomings which attract criticism. On that basis I consider that it should be used as a guide to decision making but not as an absolute determinant based upon the total score as to whether a site may or may not warrant LGS status. Individual scorings are open to question, as is discussed below in relation to the Paddock at Bushey Heath, but the overall output from the process in the selection of those sites which are of particular local significance is adequate justification for the revised list suggested for inclusion in a revised Appendix G. **(MM39)** The result is that the number of sites which satisfy LGS criteria would be reduced to only 12<sup>41</sup>. That is a step in the right direction, more closely in line with the NPPF, but see the conclusions below in relation to 'The Paddock'.

*The justification for the identification of 'The Paddock', Elstree Road, Bushey (site BH007) as Local Green Space subject to policy SADM36.*

111. Taking account of the latest evidence made available to the Council, some of it submitted by way of representation by the Bushey Heath Residents' Association, individual scores for 'Structural and landscape benefits', 'Amenity Benefits and sense of place' and 'Cultural and heritage benefits' have been increased from 1 to 2. Of these, the weakest justification is against 'Structural and landscape benefits'. Not only is that not a criterion which can clearly be related to the paragraph 77 criteria but it cannot be established beyond doubt that the 2012 planning appeal decision was not taken into account in the original score of 1. Also, although the site may provide a 'buffer between roads and houses' it does not appear to meet any of the other factors for this criterion given in Table 3 of the Amenity Land Report. It is an indication of the sensitivity of the scoring matrix that if that one factor alone was reduced to a score below 2, the site would fall below the threshold of 30.

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<sup>41</sup> It is 11 in MM39, taking account of my conclusion on LGS status for 'the Paddock'.

112. It is claimed that 'The Paddock' is the only remaining part of the original 'Bushey Heath' although it is agreed that it was never 'heathland' in geological or ecological terms. The evidence relating to the 1806 Enclosure Acts is far from conclusive. It is not shown on the 1799 parish map as 'Waste and Commonable Land' but rather part of 'copyhold tenancy'. On balance, this suggests that the land has been part of an enclosed pasture possibly since the 15<sup>th</sup> century. Nor is the evidence relating to use of the land in association with the Art School at Reveley Lodge compelling. The wishes of the late Mrs Chewitt that the land should be left open and be reserved for grazing is a matter which could only be pursued through legal channels and carries little weight in planning terms. None of these factors suggest to me that the historical significance of the site is such, in its own right, to warrant LGS status or that the increase in score from 1 to 2 in the matrix is justified.
113. On Amenity Benefits and sense of place, other than simply being open, there is no public access to the land although it may be enjoyed in a passive sense. It does not 'provide an important landmark' nor is it 'clearly visible from most areas'. There may be a general deficit of Parks and Gardens in the Bushey area but there is no indication that the land would be likely to become a public park or garden even if it were to be designated as LGS. Thus, despite the rate of development in the vicinity in recent years the contribution the site makes under this criterion does not warrant an increase from 1 to 2.
114. The conclusion reached from the above is that the scoring increases used by the Council for the individual factors are not adequately justified, which would mean, using the matrix, that 'The Paddock' falls well short of the 30 point threshold needed to be designated as Local Green Space.
115. However, as indicated above, the methodology used is not sufficiently robust to be the only determinant of whether an area of land should be included in the plan as LGS. In straightforward terms related to the NPPF and the guidance in the NPPG,<sup>42</sup> the proximity to Elstree Road means that it does not provide a 'tranquil oasis', even though it may be looked across from the seat on Caldecote Gardens. An ecological survey shows that there is no special 'richness of wildlife' nor, as analysed above, does it hold special historic significance or 'beauty'.
116. It is also the case that 'The Paddock' is very different in character and appearance from the other areas proposed by the Council for identification as LGS under the revised criteria. It is the only one described as 'semi-natural green space' and the only one which is private, other than St Giles cemetery in South Mimms. Five are war memorials and two are small parks and gardens.

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<sup>42</sup> In particular, ref. ID 037-13-20140306

117. Taking all of these factors into account, my conclusion is that 'The Paddock' is not of such special significance that it warrants designation in the plan as a Local Green Space. The submission by the Bushey Museum Property Trust as to their desire to sell the land for development to secure funding to maintain Reveley Lodge and Gardens is of no relevance to the question of LGS designation. It is mentioned only because it appears to have been a factor which strongly influenced the many individual representations against the designation of the land as a Local Green Space. It is also not the case that LGS designation would prevent the Council from being able to ensure the delivery of the housing required to meet Core Strategy requirements.
118. Finally, I wish to draw attention to the fact that in the two appeal decisions, in 2012 and 2015, the site was found to make a contribution to the character and appearance of the area based upon its individual merits, without any consideration being given to the possibility of the land becoming Local Green Space. In line with the Council's suggested modification the other sites which were listed in Appendix G of the submitted plan as Local Green Space are to be treated as 'open space' and subject to policy SADM35. For consistency, I recommend that 'the Paddock' should be treated in the same way. I have noted the Bushey Museum Property Trust's objection to such an approach but, in view of the conclusions reached in the appeal decisions, I do not consider it necessary to require the submission of further evidence on the matter. 'The Paddock' is a sizeable open space, albeit in private ownership and its inclusion in the modified Appendix G (MM39) within the 'open space' category is logical, although only the last paragraph in the revised policy SADM35 (**MM27**) would be applicable to such a site. A consequential amendment will be required to the policies map to show 'The Paddock' as subject to policy SADM35 not as Local Green Space under policy SADM36 in PM16.

**Issue 9 – Whether the policies for transport and parking (SADM39-41 inclusive) provide an adequate basis for decisions on planning applications**

119. As stated in paragraph 154 of the NPPF, local plan policies should give a clear indication as to how a decision maker should react to a proposal. That means in the determination of planning applications by the local planning authority. In that context, if the policies of those agencies which are statutory consultees in the process of determining applications are considered to be land-use related they may be included in the plan but they cannot simply be cross-referenced because they may not have been consulted upon or tested through an examination process. That applies to the policies in the Local Transport Plan.
120. As submitted, policy SADM39, is largely a reference to the County Highway Authority's road hierarchy without identifying the land-use planning implications of that hierarchy. That may include control, through the development management process, of accesses onto the road network. A modified policy put forward by the Council overcomes that deficiency and should be substituted for the original for the plan to be sound. However, Highways England raise a point about the inclusion of the words 'unless

there are special circumstances'. Such wording is unnecessary as material considerations may always be weighed against policy in decision-making.

**(MM29)** The defined road hierarchy may then be shown on the policies map but should the hierarchy be changed by a decision of the Highway Authority it would not justify a change to the adopted map.

121. Submitted plan policy SADM40 is not a land-use policy. The relevant policy is Core Strategy policy CS24 but the exact boundaries of the Transport Development Areas are not currently shown on the adopted policies map. An expansion of the policy as in **MM30** enables this to be done. It is not an ideal approach but it is not unsound. The means to implement policy SADM41 is clarified by **MM31**.

**Issue 10 – Whether the retail policies in the plan, covering the identification of town centres (policy SADM43), primary (SADM44) and secondary frontages (SADM45) and those for Shenley (SADM47), non-retail (SADM48) and night-time uses (SADM49) have been adequately justified and provide a clear basis for implementation through development management decisions.**

*Town and District Centres – policy SADM43*

122. This policy is primarily intended to complement Core Strategy policy CS27 by providing for town centre areas to be shown on the policies map. However, it also includes site-specific proposals one of which (TC2) relates to the former fire station in Radlett town centre. It requires the replacement of a former community use. However, that aspect is also covered by Core Strategy policy CS19 which provides for the consideration of the particular circumstances, including whether the use is surplus to local community needs. **MM32** is required to clarify the link between the two policies.

*Primary (policy SADM44) and secondary (policy SADM45) frontages*

123. In line with paragraph 23 of the NPPF the plan sets policies for the range of uses which will be permitted on both primary and secondary frontages, to be read in conjunction with Core Strategy policy CS28. The extent of these frontages is shown on the policies map. An update to the supporting text is required to accurately set out the latest position on permitted development rights for changes of use and the circumstances in which prior approval is required. A cautious approach to the location of A4 and/or A5 units on primary frontages is justified on the basis of their effect on the vitality and viability of town centres, but they do have a role to play and the statement in submitted policy SADM44 that such uses, along with betting shops and pay-day loan shops, 'will not be supported' is unsound. Policy SADM45 requires clarification for implementation purposes. Modifications are required to include the supporting text in paragraph 7.8 dealing with primary frontages. **(MMs 33, 34)**



*Shenley – policy SADM47*

124. Policy SADM47, although there are some subtle wording changes, is almost a direct repeat of Core Strategy policy CS29. As such it provides no added value to the Local Plan as a whole and could cause difficulties in implementation where the wording differs. The policy should be deleted from the plan. **(MM35)** It follows that the last sentence in paragraph 7.14 is redundant. There is no reason why the adopted policies map should not show the area to which policy CS29 is intended to apply and the Council has proposed an additional modification to address this issue (AM54).

*Controlling non-retail uses – policy SADM48*

125. The policy in the submitted plan only provides a list of the factors the local planning authority will 'consider' in relation to applications for non-retail uses within shopping areas. It does not give any indication as to what the outcome of such consideration might be and, consequently, it does not comply with paragraph 154 of the NPPF. The Council have recognised that and put forward a modified policy which I recommend. A particular point at issue was the treatment of proposals for hot food takeaways close to secondary schools. There is an understandable concern that students might leave school premises at lunch time and be inclined to use nearby hot food takeaway facilities. This is linked to concerns about healthy eating and obesity. It is to be noted, however, that the emphasis in national policy guidance is on the prevention of obesity through following a healthy lifestyle, including regular exercise.
126. Paragraph 7.18 in the plan text refers to a walking distance of 400 metres from a school site entrance as the area within which the impact on accessibility of such establishments will be assessed. However, a review of the research supporting the policy and a comparison with other plans does not establish conclusively that there is a particular justification for using a 400 m. distance. It is of more significance if the establishment is in clear view from a school entrance. Any policy should be flexible and provide for the submission of evidence that any healthy eating policies of the school would not be undermined. That is a reasonable, and sound, approach. It is properly restricted to A5 (takeaway) less because of dietary issues but simply as a matter of convenience when in close proximity to schools. **MM36** remains as for the draft consultative version. The references to 400 metres in paragraph 7.18 will, consequentially, need to be removed.

*Night-time and evening uses – policy SADM49*

127. Clearly this policy needs to be read alongside policy SADM48 in so far as it relates to non-retail uses. It is in the same format as policy SADM48 in only listing factors to be considered. Subject to a modification **(MM37)** to rectify that shortcoming the policy is sound.

### **Issue 11 – whether the monitoring framework is adequate**

128. Chapter 8 in the plan includes a short statement on implementation and delivery. The monitoring framework is set out in the form of a table. However, the table only covers the indicators for relatively few of the plan policies. Even though it is intended to complement the framework in Table 16 of the Core Strategy it does not give a comprehensive picture of the monitoring indicators necessary to fully measure the implementation of the plan. Without that the plan could not be fully effective. It is not adequate. A revised fully comprehensive framework is needed to replace Table 4 in the submitted plan. **(MM38)**

### **Issue 12 – whether Supplementary Planning Documents (SPD) are given the appropriate status for the purpose of decision-making**

129. References are made within policies SADM13, 31 and in criterion (v) of policy SADM41 to Supplementary Planning Documents. As stated in the glossary to the Framework such documents are not part of the development plan. As such s38(6) of the 1990 Act does not apply to the policies within them. They have not been subject to independent examination. They are material considerations but should not be determinative in their own right.
130. In each of the policies mentioned above there is a requirement for development to comply with the SPD. That is not correct for the reasons given above. No policy in a local plan can require compliance with a policy in another document other than a development plan document. The three policies are modified to substitute a requirement for decisions to be 'consistent' with the SPD. That is not an absolute requirement. The modifications are: Policy SADM 13 - **MM17**; Policy SADM31 – **MM25** and SADM41(v) – **MM31 (part)**.

## Assessment of Legal Compliance

131. My examination of the compliance of the Plan with the legal requirements is summarised in the table below.

<b>LEGAL REQUIREMENTS</b>	
Local Development Scheme (LDS)	The Hertsmere Site Allocations and Development Management Policies Plan is identified within the approved LDS April 2015 which sets out an expected adoption date of July 2016, however that was based on completion of this report in May. The delay was beyond the Council's control. The content and timing are otherwise compliant with the LDS.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in January 2014 and consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed 'main modification' changes (MM)
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Appropriate Assessment (AA)	A Habitats Regulations Assessment was undertaken as part of the SA. As there are no Natura 2000 sites within the Borough or within reasonable proximity an HRA was considered not to be necessary.
National Policy	The Local Plan complies with national policy except where indicated and modifications are recommended.
2004 Act (as amended) and 2012 Regulations.	Although, for the most part, the Local Plan complies with the Act and the Regulations, the policies map should be a separate document not bound in with the plan as at submission. Although the Council acknowledge this in PM1 a formal modification <b>(MM40)</b> is required to the plan in addition.

## Overall Conclusion and Recommendation

132. The Plan has a number of deficiencies in relation to soundness and/or legal compliance for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
133. The Council has requested that I recommend main modifications to make the Plan sound and/or legally compliant and capable of adoption. **I conclude that subject to the recommended main modifications, as set out in the Appendix to this report, being made, the Hertsmere Site Allocations and Development Management Policies Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework. I recommend its adoption on that basis.**

*John R Mattocks*

Inspector

This report is accompanied by an Appendix containing the Main Modifications